



BRB Nos. 18-0174 BLA
and 18-0174 BLA-A
Case No. 2016-BLA-05329

GREGORY H. MINIARD)	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
SHAMROCK COAL COMPANY,)	
INCORPORATED, self-insured through SUN)	DATE ISSUED: 11/23/2021
COAL COMPANY)	
)	
Employer-Respondent)	
Cross-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	ORDER on MOTION for
)	RECONSIDERATION
Party-in-Interest)	EN BANC AND ERRATA

Employer has filed a timely motion for reconsideration of the Benefits Review Board’s Decision and Order affirming in part and vacating in part the administrative law judge’s denial of benefits in this case, *Miniard v. Shamrock Coal Co., Inc.*, BRB Nos. 18-0174 BLA, 18-0174 BLA-A (Aug. 30, 2019) (unpub.).¹ 33 U.S.C. §921(b)(5); 20 C.F.R.

¹ The Board’s decision misstates, “The record in this case contains a statement from the district director submitted pursuant to 20 C.F.R. §725.495(d) indicating that M&E Enterprises is not financially *incapable* of assuming liability for the payment of benefits.” *Miniard v. Shamrock Coal Co., Inc.*, BRB Nos. 18-0174 BLA, 18-0174 BLA-A, slip op. 10 (Aug. 30, 2019) (unpub.) (emphasis added), *citing* Director’s Exhibit 64. The sentence is corrected to read, “The record in this case contains a statement from the district director submitted pursuant to 20 C.F.R. §725.495(d) indicating that M&E Enterprises is not financially capable of assuming liability for the payment of benefits.”

§802.407. Claimant did not respond. The Director, Office of Workers' Compensation Programs, responds, urging denial of the motion. After consideration of Employer's contentions and review of the Board's disposition of this case, a majority of the Board not having voted to grant Employer's motion,² Employer's motion for reconsideration en banc is denied.³ 20 C.F.R. §§801.301(b), (c), 802.407(b), (d), 802.409.

By Order of the Board:

Thomas O. Shepherd, Jr.

Clerk of the Appellate Boards

² Administrative Appeals Judge Ryan Gilligan was on the panel of the Board's decision but he is no longer with the Board. 20 C.F.R. §802.407(a).

³ Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the Affordable Care Act (ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional and the case should be held in abeyance. Employer's arguments with respect to the constitutionality of the ACA and the severability of its amendments to the Black Lung Benefits Act are now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).